

IN THE SUPREME COURT OF OHIO

**LEAGUE OF WOMEN VOTERS OF
OHIO, *et al.*,**

Petitioners,

v.

**OHIO REDISTRICTING COMMISSION,
et al.,**

Respondents.

Case No. 2021-1449

**Original Action Filed Pursuant to Ohio
Const., art. XIX, Sec. 3(A)**

**PETITIONERS' MOTION FOR LEAVE TO FILE SECOND AMENDED
COMPLAINT**

Pursuant to Rule 15(a) of the Ohio Rules of Civil Procedure, Petitioners League of Women Voters of Ohio, *et al.*, respectfully move for leave to file a Second Amended Complaint.

As detailed in the Proposed Second Amended Complaint, attached herewith as Exhibit A, and the Memorandum filed herewith, Petitioners move to amend their complaint to add the Ohio Redistricting Commission (the "Commission") as a respondent, based on the Commission's enactment of a constitutionally defective plan on March 2, 2022 (the "Revised Plan") in violation of this Court's January 14, 2022 order. The Amendment further updates the pleading allegations to conform with the facts as they have evolved since the filing of the First Amended Complaint.

In light of the need to resolve this case expeditiously ahead of the forthcoming elections, Petitioners respectfully request that this Court order Respondents to file their response, if any, by Monday, March 14, 2022 at 12:00 pm ET.

WHEREFORE, Petitioners respectfully request that this Court grant its motion for leave to file a Second Amended Complaint.

Date: March 11, 2022

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INTRODUCTION

This motion seeks to end a procedural maneuver by Respondents Huffman and Cupp that improperly seeks to prevent the enforcement of this Court’s January 14 order. Put simply:

- On November 21, 2021, Governor DeWine signed into law a congressional plan adopted by the General Assembly (the “Enacted Plan”). That enactment prompted the filing of this case.
- On December 2, 2021, the Ohio Redistricting Commission (the “Commission”) sought dismissal as a party noting that the Enacted Plan had been adopted by the General Assembly and therefore “[Petitioners’] legal claims are not based on any wrongdoing by the Commission.” Resp’ts’ Mot. to Dismiss at 3.
- On December 6, 2021, this Court, *sua sponte*, dismissed the Commission as a respondent. See *League of Women Voters of Ohio v. Ohio Redistricting Commission*, 12/06/2021 Case Announcements #2, 2021-Ohio-4267.

That was then. The facts changed on March 2, 2022. On that date *the Commission* enacted a new congressional district plan (the “Revised Plan”). The Revised Plan, however, failed to comply with this Court’s January 14, 2022 order, which specifically directed *the Commission* to cure the partisan gerrymandering defects of the Enacted Plan should the General Assembly fail to do so. *Adams v. DeWine*, Slip Opinion No. 2022-Ohio-89, ¶ 99; see also Pet’rs’ Mot. to Enforce at 7–8.

Yet on March 10, 2022, Respondents Huffman and Cupp remarkably stated that this Court’s January 14 order is of no consequence because the Commission is not a party to this lawsuit. Resp’ts Huffman and Cupp Resp. to Pet’rs’ Mot. to Enforce at 5–6. And through the device of a handoff of the map-drawing task from the General Assembly to the Commission, Respondents boldly proclaim that critical anti-gerrymandering constraints of the Ohio Constitution—Article XIX, Section 1(C)(3)(a) and (b) (the “Unduly Requirements”)—no longer apply. They therefore declare, without the slightest hint of embarrassment, that they are free

from this Court's specific order that *the Commission* correct the prior map's violations of Section 1(C)(3). *Id.* at 10.

There is no dispute that the Enacted Plan was adopted by the General Assembly and was subject to the requirements of Section 1(C)(3). There is no dispute that this Court had the authority to identify legal defects in the Enacted Plan and require that they be remedied. And there *should be* no dispute that merely because it has fallen to the Commission to fix those defects that the obligation to fix them has somehow been eliminated.

Yet that is precisely what Respondents dispute. Worse, Respondents incredibly seek to turn this Court's December 6, 2021 order dismissing the Commission as a party, when it had *not* enacted any map, into a license to gerrymander when it *has*. It is time to put this unseemly side show to rest.

Petitioners' Motion to Enforce stated the reasons that the Commission, as a non-party, is bound by the January 14, 2022 order. Pet'rs' Mot. to Enforce at 7–8. Petitioners stand by those arguments. Petitioners nonetheless bring this motion for leave to amend to add the Commission as a respondent so as to moot any question as to the Court's authority over the Commission. And Petitioners respectfully request that in granting this motion (and the Motion to Enforce) that this Court should re-affirm that the Commission is bound by this Court's January 14, 2022 order, any subsequent order regarding the Revised Plan, and the strictures of Article XIX, Section 1(C)(3).

The focus here should be on what matters: ensuring that the voters of Ohio can exercise their franchise under a constitutional map; not on indulging Respondents' dilatory tactics. Accordingly, this litigation should not be delayed during the pendency of this motion. To do so would merely reward Respondents' improper defiance of this Court's order.

FACTUAL BACKGROUND

A. The Ohio Supreme Court Invalidated the Plan Enacted By the General Assembly Based on Article XIX, Section 1(C)(3).

On November 20, 2021, Governor Mike DeWine signed into law SB 258, a congressional districting map that was passed by a simple majority in the General Assembly. Ten days later, Petitioners filed a complaint before this Court alleging that the map drawn and passed by the General Assembly violated Article XIX of the Ohio Constitution.

Within days of the filing of the complaint, Respondents moved to dismiss the case and stay discovery. *See generally* Resp'ts' Mot. to Dismiss. On December 6, 2021, the Court, *sua sponte*, dismissed the Commission and the individual members of the Commission from the suit but allowed Petitioners' claims to proceed against Respondents LaRose, Cupp, and Huffman in their official capacities as Secretary of State, Speaker of the House, and Senate President, respectively. *See League of Women Voters, 12/06/2021 Case Announcements #2, 2021-Ohio-4267.*

Following expedited discovery, full merits briefing, and oral argument, this Court held that the General Assembly “did not comply with Article XIX, Sections 1(C)(3)(a) and (b) of the Ohio Constitution in passing the congressional-district plan” and thus invalidated that plan. *Adams*, Slip Opinion No. 2022-Ohio-89, ¶ 102. This Court further ordered the General Assembly to “pass a new congressional-district plan, as Article XIX, Section 3(B)(1) requires.” *Id.* And the Court went further, making it clear that if the Commission were tasked with revising the plan, it would also have to remedy the defects identified by the Court. Thus, this Court stated:

By the plain language of Article XIX, Section 3(B), both the General Assembly and the reconstituted commission, should that be necessary, are mandated to draw a map that comports with *the directives of this opinion.*

Id. ¶ 99. Notably, the Court’s order specifically directed compliance with Sections 1(C)(3)(a) and (b):

{¶ 102} We hold that the General Assembly did not comply with Article XIX, *Sections 1(C)(3)(a) and (b)* of the Ohio Constitution in passing the congressional-district plan. We therefore declare the plan invalid and we order the General Assembly to pass a new congressional-district plan . . . that complies in full with Article XIX of the Ohio Constitution and is not dictated by partisan considerations.

Id. ¶ 102 (emphasis added).

Consistent with the Court’s January 14, 2022 order and Article XIX, Section 3(B)(1), the General Assembly was then required to enact a congressional districting plan within 30 days of the Court’s order—*i.e.*, by February 13, 2022. If the General Assembly failed to enact a plan by that date, then responsibility for enacting a map would pass to the Commission. Critically, the Commission’s revised plan would need to remedy the legal defects identified in this Court’s order. *See* Ohio Const., art. XIX, § 3(B)(2).

B. The General Assembly Failed to Enact a Plan in Accordance with the Court’s January 14, 2022 Order and Lateraled the Map-Drawing Task to the Commission.

On February 8, 2022, House Speaker Cupp, Co-Chair of the Commission, acknowledged that the General Assembly would not pass a map by the Section 3(B)(1) deadline of February 13, 2022. Josh Rultenberg, *Congressional Redistricting Headed for Ohio Redistricting Commission*, Spectrum News 1 (Feb. 8, 2022), <https://bit.ly/3hEZJ3L>, (accessed Mar. 10, 2022). On February 13, 2022, the deadline came and went without any further action by the General Assembly. J.D. Davidson, *Ohio Lawmakers Miss Deadline for New Congressional District Map*, The Center Square (Feb. 14, 2022), <https://bit.ly/3sB0AJ1>, (accessed Mar. 10, 2022).

On February 22, 2022, the Commission convened to discuss congressional districting plans. At that hearing, Speaker Cupp explained that the responsibility for passing a congressional districting plan fell to the Commission now that the General Assembly failed to pass a plan by its constitutionally mandated deadline. Ex. 12, Tr. of Feb. 22, 2022 Ohio Redistricting Comm. Hrg., at 1; *see also* Ohio Const., art. XIX, § 3(B)(2). The Commission then heard testimony from sponsors of proposed congressional plans on February 23 and 24, 2022. The Ohio Redistricting Comm., *Announcement of Commission Meeting*, (Feb. 23, 2022), <https://bit.ly/3psSnVm>, accessed (Mar. 10, 2022).

One week later, on March 1, 2022, the Commission convened again. At this hearing, Speaker Cupp and Senate President Huffman introduced a Republican-drawn congressional districting plan, to which Senate President Huffman invited Democratic amendments. Ex. 13, Tr. of Mar. 1, 2022 Ohio Redistricting Comm. Hrg., at 9.

The next day, on March 2, 2022, the Democratic Commissioners proposed amendments to the Republican-sponsored plan, which were promptly rejected by the Republican Commissioners. Ex. 14, Tr. of Mar. 2, 2022 Ohio Redistricting Comm. Hrg., at 6, 14. The Commission then took up the Republican-sponsored plan, which was passed by a simple majority of the Commission on a 5–2 party-line vote. *Id.* at 00:53:04.

In so doing, the Commission failed to remedy the legal defects in the previously invalidated plan, as identified by the Ohio Supreme Court in its January 14, 2022 order. In particular, the Revised Plan fails to remedy the violations of Sections 1(C)(3)(a) and (b) (the “Unduly Requirements”)—which were specifically identified as requiring remediation by this Court. *See Adams*, Slip Opinion No. 2022-Ohio-89, ¶ 102; *see also id.* ¶ 99 (making clear that

the Commission was subject to the directives of this opinion, including the Unduly Requirements).

ARGUMENT

I. This Court Has Jurisdiction Over the Ohio Redistricting Commission.

Respondents contend that the Court lacks jurisdiction over the Commission. They point to the absence of express language in the January 14, 2022 order stating that the Court retains jurisdiction. Resp'ts Huffman and Cupp Resp. to Pet'rs' Mot. to Enforce at 5–6. Respondents further contend that if the Court is to proceed here, a new case—and not amendment—should be filed. *Id.* at 6. These arguments are incorrect for several reasons.

A. This Court Can Exercise Authority Over the Commission.

As an initial matter, this Court has original and exclusive jurisdiction to consider and adjudicate unconstitutional defects in congressional plans. *See* Ohio Const., art. XIX, §3 (A). That the Court did not expressly state that it had retained jurisdiction is of no moment. Section 3(A) provides the Court with jurisdiction, and its authority remains intact absent a determination that the case is concluded. The Court has made it manifestly clear that the case is not concluded, having just this week issued an order, *sua sponte*, requiring responses to Petitioners' Motion to Enforce.

Indeed, it would be absurd if the Court, having directed the enactment of a remedial plan that addressed the legal defects identified in its January 14, 2022 order, abruptly left the field, indifferent as to whether there was compliance with its order. Put simply, if the General Assembly or the Commission enacts a revised plan, this Court has jurisdiction to review it consistent with the provisions of Sections 3(B)(1) or 3(B)(2).

B. An Amendment is the Proper Means for Adding the Commission as a Respondent.

Respondents argue that Petitioners must file a new case against the Commission. However, they do not cite any cases that indicate that a party in an ongoing case must file an entirely new case against an additional respondent, rather than amending its existing complaint. Resp'ts' Huffman and Cupp Resp. to Pet'rs' Mot. to Enforce at 6–7.

In fact, the case law makes clear that an amendment under Rule 15 is the correct approach for adding a party to a complaint. Ohio courts have liberally allowed the amendment of a complaint to add a new party under Rule 15 when justice so requires, and the addition of a new party becomes necessary through the case's evolution. See *Darby v. A-Best Prods. Co.*, 102 Ohio St.3d 410, 413, 2004-Ohio-3720, 811 N.E.2d 1117, 1120, ¶¶ 11–12 (noting that in federal practice, plaintiffs invoke Fed. R. Civ. P. 15 to add completely new parties and accepting this approach under Ohio Law); *Franciscan Communities, Inc. v. Rice*, 2021-Ohio-1729, ¶¶ 8–12 (8th Dist.) (discussing the trial court's acceptance of multiple amendments to add parties closely related to the complaint); *Monroe v. Forum Health*, 11th Dist. Trumbull, 2014-Ohio-3974, ¶ 38 (“Pursuant to Civ.R. 15, a party may amend his pleadings with the leave of court ‘when justice so requires.’ This includes amending the pleadings to include additional parties when necessary.”) (citing *Christ v. Konski*, 181 Ohio App.3d 682, 2009-Ohio-1460, 910 N.E.2d 520, ¶¶ 17–18 (granting a motion to amend to add an additional party as “a necessary and determinative component of appellant’s case”))).

Indeed, the stated purpose of Rule 15 is to allow litigants to “avoid the necessity of filing a new complaint.” See 1970 Staff Notes, Ohio Civ.R. 15. Forcing Petitioners to file a new lawsuit, as Respondents implausibly suggest, would require Petitioners to “go through the unnecessary hassle and expense of filing a new lawsuit when events subsequent to filing the

original complaint have fixed the jurisdictional problem.” *Scahill v. District of Columbia*, 909 F.3d 1177, 1184 (D.C. Cir. 2018). And while filing a new complaint might in some cases be only an “unnecessary hassle,” here, in this case, it could well prevent Petitioners from obtaining relief, given that this Court has limited time left to act before the 2022 elections, as Respondents themselves have pointed out. Resp’ts Huffman and Cupp Resp. to Pet’rs’ Mot. to Enforce at 25–26. Justice thus requires that Petitioners be permitted to amend their existing complaint to add the Commission as a party to this case, which this Court can reasonably resolve ahead of forthcoming election deadlines.

C. The Proposed Amendment Specifies the Basis for Jurisdiction Over the Commission.

Respondents have contended in prior motions to dismiss that Petitioners, in bringing a claim against the Commission, must allege that the Commission itself was responsible for enacting the map that caused their injury. *See* Resp’ts’ Mot. to Dismiss at 7, *Adams v. DeWine*, No. 2021-1428; Resp’ts’ Mot. to Dismiss at 3, *League of Women Voters v. DeWine*, No. 2021-1449. Petitioners’ proposed amendment does just that. It amends the operative complaint to add the Commission as a respondent based on the Commission’s recent enactment of the Revised Plan. Pet’rs’ Proposed Second Am. Compl. ¶¶ 44–45.

Moreover, the Commission is likely to enact further revisions to the congressional plan, should the Court invalidate the Revised Plan. Respondent Cupp has stated that the reason that the Commission was asked to enact the Revised Plan was because its plan could go into effect immediately rather than in 90 days (as is the case with legislation). *See* Ex. 12, Tr. of Feb. 22, 2022 Hrg., at 1 (“The General Assembly did not have time remaining in order to adopt a congressional district map that could be in effect for the primary election because it would take 90 days for such a bill to go into effect, which would be past the primary date.”); Ohio Const.,

art. II, § (1)(c). That same consideration will apply to the enactment of any plan following any order issued by this Court concerning the Revised Plan. No doubt, the ball will once again be lateraled to the Commission.

II. The Amendment Is Not Futile: Article XIX’s “Unduly Requirements” and this Court’s January 14, 2022 Order Apply to the Commission’s Revised Plan.

The Proposed Amendment properly alleges that given that the Commission was tasked with remedying the legal defects identified by this Court in its January 14, 2022 order, it was required to comply with the requirements of Section 1(C)(3)(a) and (b)—the “Unduly Requirements.” This is true under Section 3(B)(2) for two reasons: (i) the Commission is unquestionably required to remedy legal defects identified by this Court—and this Court identified violations of the Unduly Requirements; and (ii) it is undisputed that Section 1(C)(3) applied to the original Enacted Plan, and it cannot be erased simply because the task of correcting errors in the Enacted Plan was handed off to the Commission.

A. Article XIX, Section 3(B)(2) Requires that Any Plan Enacted by the Commission Cure the Defects Identified by this Court’s Order.

1. Section 3(B)(2) Requires the Commission to Remedy Legal Defects Identified by the Court.

Respondents note that the Commission is required, by Section 3(B)(2) to “remedy any legal defects in the previous plan.” Resp’ts Huffman and Cupp Resp. to Pet’rs’ Mot. to Enforce at 12–13. In discussing Section 3(B)(2), however, Respondents, conveniently omit the last four words of that provision—which require the Commission to “remedy any legal defects in the previous plan *identified by the court.*” Ohio Const., art. XIX, § 3(B)(2) (emphasis added).

That omission, whether purposeful or not, is dispositive. By stating that the Commission, must remedy the legal defects *identified by this Court*, Section 3(B)(2) provides a focus of what the Commission must do. To find otherwise, as the Attorney General notes, would incentivize

the General Assembly to knowingly pass a plan that violates the Unduly Requirements in the first instance, on the assumption that the Commission could re-pass the very same plan under Section 3, following invalidation by this Court. *See* Ex. 18, Ohio Attorney General Opinion, No. 2022-004, at 10 (Mar. 1, 2022). This Court should not give credence to such an absurd reading of Article XIX.

2. This Court’s January 14, 2022 Order Specifically Directed that Section 1(C)(3) Infirmities Be Cured—and that the Commission Do So If It Drew the Map.

The Court’s January 14 order identified the violation of Section 1(C)(3) as the core defect of the Enacted Plan, stating: “the General Assembly did not comply with Article XIX, Sections 1(C)(3)(a) and (b) of the Ohio Constitution.” *Adams*, Slip Opinion No. 2022-Ohio-89, ¶ 102. The Court “order[ed] the General Assembly to pass a new congressional-district plan . . . that complies in full with Article XIX of the Ohio Constitution and is not dictated by partisan considerations.” *Id.*

That, without more, triggers the requirement of Section 3(B)(2) that the Commission remedy this specifically identified defect. But the Court left no doubt as to the Commission’s obligations. Thus, it clearly stated that “*both the General Assembly and the reconstituted commission, should that be necessary, are mandated to draw a map that comports with the directives of this opinion.*” *Id.* ¶ 99 (emphases added).

And, as set forth above, pursuant to Article XIX, Section 3(B), the Commission was bound to carry out this directive. Failure to do so is a direct violation of this Court’s order.

B. The Absence of a Reference to the Commission in Section 1(C)(3) Does Not Exempt the Commission from Remediating Section 1(C)(3) Defects Identified by the Court in a Plan Originally Enacted by the General Assembly.

The requirements of Article XIX, Section 3 are straightforward. Following the identification of constitutional defects by this Court, the General Assembly is first tasked with

remediating those defects. Should the General Assembly fail to do so, the task passes to the Commission. But nothing in Section 3 suggests that the Commission is thereby exempted from the obligation to remedy the defects identified by this Court in the original plan. If the Commission picks up the task of drawing a new map, pursuant to Section 3(B)(2), it also must shoulder the obligation to cure the defects identified by this Court as regards to the original map.

Respondents contend that the Commission can ignore the Court's prior order. They argue for an unwritten exemption from the Unduly Requirements of Section 1(C)(3) because that is purportedly the only way that the redistricting process can be brought to a close. Resp'ts Huffman and Cupp Resp. to Pet'rs' Mot. to Enforce at 14. They contend that this is a necessary "safety valve." *Id.*

But there is no escape clause from judicial review under Section 3(B)(2). The plain language of that provision states that the Commission must correct any defects in the prior plan identified by an order of this Court. Put simply, any contention by Respondents regarding what might have been the case if the Commission had adopted the Enacted Plan in the first instance is simply irrelevant to this case.

III. This Motion for Leave to Amend Fully Complies With the Requirements of Ohio Civil Rule 15(A).

Ohio Civ.R. 15(A) governs amendments and provides, in relevant part, that a "party may amend its pleading only with the opposing party's written consent *or* the court's leave. The court shall *freely give leave when justice so requires.*" Ohio Civ.R. 15(A) (emphases added).¹ Justice requires the amendment here.

¹ Petitioners sought consent from Respondents to file their Proposed Second Amended Complaint on March 10, 2022. Respondent LaRose takes no position on the Proposed Amendment. As of this filing, Respondents Huffman and Cupp have not provided a response.

Following this Court’s invalidation of the congressional plan enacted by the General Assembly, the Commission enacted a new congressional plan on March 2, 2022. That plan fails to comply with the Unduly Requirements of the Ohio Constitution *and* runs afoul of this Court’s January 14, 2022 order. In light of those *new* facts, Petitioners’ proposed amendment to add the Commission as a respondent in this case is undoubtedly justified. *See, e.g., Christ v. Konski*, 181 Ohio App.3d 682, 685, 2009-Ohio-1460, 910 N.E.2d 520, 523, ¶¶ 17–18 (granting a motion to amend to add an additional party as “a necessary and determinative component of appellant’s case”); *Monroe v. Forum Health*, 11th Dist. Trumbull No. 2014-T-0015, 2014-Ohio-3974, ¶ 38 (“Pursuant to Civ.R. 15, a party may amend his pleadings with the leave of court ‘when justice so requires.’ This includes amending the pleadings to include additional parties when necessary.”); *Calex Corp. v. United Steelworkers of America*, 137 Ohio App.3d 74, 79, 738 N.E.2d 51, 54 (7th Dist. 2000) (“Civ.R. 15 permits a litigant to change a pleading to adjust to factual changes. Whether these changes are made pursuant to Civ.R. 15(A) or 15(E) is inconsequential, so long as the recipient of the changed complaint receives adequate notice, has a reasonable opportunity to respond, and is not otherwise prejudiced.”).

Moreover, Petitioners’ motion for leave to amend is “timely filed” and “state[s] a claim upon which relief may be granted.” *Peterson v. Teodosio*, 34 Ohio St.2d 161, 297 N.E.2d 113, 115 (1973). Indeed, none of the reasons for denial—“a showing of bad faith, undue delay, or undue prejudice to the opposing party” —applies here. *Turner v. Cent. Loc. Sch. Dist.*, 85 Ohio St.3d 95, 99, 706 N.E.2d 1261, 1264 (1999). Accordingly, the Court should grant Petitioners’ motion for leave to amend. *See id.* (Rule 15(a) “allows for liberal amendment”).

A. Petitioners Did Not Unduly Delay the Filing of Their Proposed Second Amended Complaint.

Petitioners' proposed amendment is premised on the Commission's recent enactment of the constitutionally defective Revised Plan.

Petitioners originally named the Commission as a respondent when it first filed suit on November 30, 2021. The Commission then filed a motion to dismiss, arguing, *inter alia*, that the Commission should not be a party because the Commission had not adopted the Enacted Plan. *See* Resp'ts' Mot. to Dismiss at 3. The Court, *sua sponte*, dismissed the Commission. *See League of Women Voters, 12/06/2021 Case Announcements #2, 2021-Ohio-4267*. It then invalidated the congressional districting plan and ordered the General Assembly to "pass a new congressional-district plan, as Article XIX, Section 3(B)(1) requires." *Adams, 2022-Ohio-89*, ¶ 102.

On March 2, 2022, the Commission enacted the Revised Plan. Roughly a week after the Commission adopted the Revised Plan, Petitioners filed this instant motion. Given the speed with which Petitioners moved to amend, and the purpose of the amendment—*i.e.*, to ensure that the operative complaint includes the parties responsible for the newly enacted plan—Petitioners did not unduly delay the filing of their proposed amendment. *Cf. Turner, 85 Ohio St.3d at 99* (two years and ten months delay held to be grounds for denying leave to amend complaint).

Nor does this amendment risk an adverse effect on the election schedule. In his Response to Petitioners' Motion to Enforce in a related case, Respondent LaRose explains:

This Court's decision regarding the March 2 Plan will be dispositive. . . . If it declares the Plan constitutional, then an election will proceed on a constitutional map. On the other hand, if it invalidates the Plan and prohibits its use, the congressional party primaries will not be able to be held in conjunction with the May 3, 2022 primary election. Problem solved.

Resp. of Sec’y LaRose to Pet’rs’ Mot. to Enforce at 3, *Adams v. DeWine*, No. 2021-1428. As Respondents acknowledge, any concern of delay—let alone “undue delay”—is not at issue here.

B. Petitioners’ Amendment to Add the Ohio Redistricting Commission as a Proper Respondent is Made in Good Faith.

Amendments to a complaint must be “sought in ‘good faith’” and not as a “delaying tactic.” *Solowitch v. Bennett*, 8 Ohio App.3d 115, 117, 456 N.E.2d 562, 564–65 (8th Dist. 1982). As explained above, Petitioners’ amendment is undoubtedly timely and not “simply a delaying tactic.” *Id.*

Nor can Respondents infer bad faith from a lack of “disclosed basis to support their new allegations.” *Id.* To the contrary, Petitioners’ basis for this case and for the proposed amendment has been made known to the Commission since this suit was first filed, as it was initially named as a respondent and the prayer for relief includes relief against the Commission.

Finally, as explained above, *see supra* § II, Petitioners’ renewed claims against the Commission are predicated not only on this Court’s order and Section 3(B) of Article XIX, but also upon Respondents’ absurd contention that the Unduly Requirements do not apply to the Revised Plan because the *Commission* was an entity with the power to remedy the “legal defects identified by the court.” Respondents’ attempted end run around the Court, and attempted evasion of both the letter and spirit of Article XIX’s anti-gerrymandering provisions, only underscores the propriety of Petitioners’ proposed amendment.

C. Petitioners’ Proposed Amendment Does Not Unduly Prejudice Respondents.

Petitioners’ amendment will not prejudice Respondents. Ohio law requires that a movant “marshal support for the new matters sought to be pleaded, and that the amendment is not . . . one which would cause prejudice to the defendant.” *Solowitch*, 8 Ohio App.3d at 117.

At a minimum, Respondents have known since late November 2021 that Petitioners sought to include the Commission as a party to this suit. Indeed, the Commission and the individual Commissioners, some of whom are already parties to this litigation, have been aware of the ongoing litigation since that time. Accordingly, Respondents cannot plausibly argue that the proposed amendment unduly prejudices them, as the timing of Petitioners' amendment certainly does not require that anything that has transpired needs to be re-wound. *Cf. Franciscan Communities*, 2021-Ohio-1729, ¶ 47 (8th Dist.) (upholding denial of amendment because the two years of proceedings that had already taken place would “essentially have to be reset” with significant cost to the existing opposing party if the motion were to be granted).

Finally, the Ohio Constitution itself contemplates the Commission's role to enact a revised plan if the General Assembly fails to pass a plan within 30 days, following an order of this Court invalidating a district plan. *See* Ohio Const., art. XIX, § 3(B)(1). Thus, Respondents cannot possibly be prejudiced by a procedure invoking the Commission that is enshrined in the Ohio Constitution.

IV. This Litigation Should Proceed While This Motion for Leave to Amend Is Pending—and this Motion Can Be Resolved Expeditiously.

This proposed amendment merely adds the Commission as a Respondent and conforms the pleadings to the facts as they have evolved since the filing of the operative complaint. It makes explicit the applicability of Section 1(C)(3) to any revision of the Enacted Plan adopted by the Commission. None of these points are new. Indeed, Respondents have already briefed them. In short, there is no need to slow the progress of this litigation while the motion for leave is pending. The filing of a dilatory motion should not be rewarded by a delay of the case.

Nonetheless, in light of the need to resolve this case expeditiously, Petitioners respectfully request that this Court order Respondents to file their response, if any, by Monday, March 14, 2022 at 12:00 pm ET.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the Court grant their Motion for Leave to File a Second Amended Complaint.

Date: March 11, 2022

Respectfully submitted,

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EXHIBIT A

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IN THE SUPREME COURT OF OHIO

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A. Philip Randolph Institute of Ohio,
6805 Oak Creek Drive
Columbus, OH 43229

Bette Evanshine,
3877 Paxton Ave.
Cincinnati, OH 45209

Janice Patterson,
401 Bounty Way Apt. 162
Avon Lake, OH 44012

Barbara Brothers,
1310 5th Ave, Apt. 1005
Youngstown, OH 44504

John Fitzpatrick,
3536 Homewood Ave.
Cuyahoga Falls, OH 44221

Janet Underwood,
108 E. Hudson Ave.
Dayton, OH 45405

Stephanie White,
8 Hidden Valley Drive Apt. 18
Toledo, OH 43615

Renee Ruchotzke,
237 Highland Ave.
Kent, OH 44240

Tiffany Rumbalski,
3830 Westbrook Dr.
Hilliard, OH 43026

Petitioners,

Case No. 2021-1449
Original Action Filed Pursuant to
Ohio Const., art. XIX

RETRIEVED FROM DEMOCRACYDOCKET.COM

v.

Secretary of State Frank LaRose, in his official capacity as Secretary of State,
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16th Floor
Columbus, OH 43215

Senate President Matt Huffman, in his official capacity as President of the Ohio Senate,
Ohio Statehouse
1 Capitol Square
2nd Floor
Columbus, OH 43215

House Speaker Robert R. Cupp, in his official capacity as Speaker of the Ohio House of Representatives,
77 S. High St.
14th Floor
Columbus, OH 43215

Ohio Redistricting Commission,
Ohio Statehouse
1 Capitol Square
Columbus, OH 43215

Respondents.

RETRIEVED FROM DEMOCRACYDOCKET.COM

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INTRODUCTION

1. Following this Court’s invalidation of the 2021 congressional district plan (the “Enacted Plan”), the Ohio Redistricting Commission (the “Commission”), on March 2, 2022, enacted a revised plan (the “Revised Plan”), setting forth the map of congressional districts in Ohio. The Revised Plan, proposed by Republicans, was once again passed along strict party lines, with all Republican Commissioners, and no Democratic Commissioners, voting in favor of the plan.

2. Under Article XIX, Section 3(B)(2) of the Ohio Constitution, the Revised Plan must remedy any legal defects in the prior plan identified by this Court. Those defects centered on Sections 1(C)(3)(a)–(b). The Revised Plan failed to meet that requirement and, like the first Enacted Plan, continues to unduly favor the party that drew and enacted it, and to unduly split governmental units to strategically achieve that objective.

3. This partisan result was achieved by drawing manifestly non-compact districts. For example, in Congressional District 4, the Republican map drawers cracked Hamilton County and appended Warren County to add Republican voters, transforming what should be a strong Democratic-leaning seat in Hamilton County into a toss-up. In Congressional District 15, the Democratic precincts on the outskirts of Columbus were submerged into a district populated with Republican voters, creating what Senate President Huffman himself has described as a “Frankenstein District” that strongly favors the Republican Party.

4. Thus, under the Revised Plan, two manifestly non-compact districts were created to prevent the emergence of more compact Democratic-leaning districts. Accordingly, there can be no question that by these actions alone, the Revised Plan unduly favors the Republican Party in violation of Article XIX, Section 3 of the Ohio Constitution.

5. In 2018, Ohio voters overwhelmingly passed an amendment to the Ohio Constitution to eliminate this type of extreme partisanship. The amendment came after decades of grassroots dissatisfaction with the gerrymandering that occurred under Ohio’s congressional redistricting process. Ohioans’ desire for reform intensified after the passage of the 2011 congressional plan, which split tightly knit communities and paired those with little in common. For example, the first elections in 2012 held under the 2011 map saw Republicans win a disproportionate number of congressional seats—12 of 16—despite decisive Democratic victories in the presidential and U.S. Senate races. Ex. 1, Rodden Aff. ¶¶ 2, 13–14, 17. And under the 2011 plan, not a single district changed hands throughout the entire decade.

6. Article XIX, Section 1(C)(3)(a)—which prevents the enactment of a congressional plan that “unduly” favors one political party or its incumbents—reflects the clear will of Ohioans to prohibit partisan gerrymandering in the drawing of a plan defining Ohio’s congressional districts. Ohio Const., art. XIX, § 1(C)(3)(a). The prohibition of partisan gerrymandering is unequivocal and unconditional; it states that a plan subject to a simple majority vote shall not “unduly favor[] or disfavor[] a political party or its incumbents.” *Id.* (emphases added). This Court’s January 14, 2022 order found that the Enacted Plan ran afoul of this requirement. *See Adams v. DeWine*, Slip Opinion No. 2022-Ohio-89, ¶ 102.

7. Section 1(C)(3)(b) also plainly states: “The general assembly *shall not unduly* split governmental units. . . .” (emphasis added). This Court’s January 14, 2022 order also found that the Enacted Plan ran afoul of this requirement. *Adams*, Slip Opinion 2022-Ohio-89, ¶ 102.

8. The Revised Plan, however, did not cure the legal defects identified by this Court. It continues to unduly favor the Republican Party and unduly split governmental units in the service of improper partisan objectives.

9. It was and continues to be necessary and appropriate for this Court to exercise its constitutionally delegated authority to review the Revised Plan. *See* Ohio Const., art. XIX, § 3(A) (the “supreme court of Ohio shall have exclusive, original jurisdiction in all cases arising under this article”). Indeed, the U.S. Supreme Court has clearly stated that it is the province of state courts to address such anti-democratic consequences of partisan gerrymandering. *Rucho v. Common Cause*, 139 S. Ct. 2484, 2507, 204 L.Ed.2d 931 (2019) (“Provisions in state statutes and state constitutions can provide standards and guidance for state courts to apply.”).

10. Judicial intervention was and continues to be necessary and appropriate here because the extreme partisan gerrymandering that has occurred in Ohio, yet again, violates “the core principle of republican government . . . that the voters should choose their representatives, not the other way around.” *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm.*, 135 S. Ct. 2652, 2677, 192 L.Ed.2d 704 (2015). Rather than reflecting voters’ actual preferences, Ohio’s Revised Plan, like the Enacted Plan invalidated by this Court, systematically locks in candidates from the Republican legislators’ preferred party and discourages electoral competition responsive to voters’ preferences.

11. Petitioners bring this action to ensure that the fair, neutral, and constitutionally mandated requirements of Article XIX govern the current congressional reapportionment process and the map that will apply in the 2022 elections.

JURISDICTION

12. Article XIX, Section 3 provides this Court with “exclusive, original jurisdiction in all cases arising under this article” without limitation. Ohio Const., art. XIX, § 3(A). In

particular, Section 3(B) provides that the task of remedying constitutional infirmities identified in an enacted plan falls, in the first instance, to the General Assembly:

In the event that any section of this constitution relating to congressional redistricting, any congressional district plan, or any congressional district or group of congressional districts is challenged and is determined to be invalid by an unappealed final order of a court of competent jurisdiction then, notwithstanding any other provisions of this constitution, the General Assembly shall pass a congressional district plan in accordance with the provisions of this constitution that are then valid, to be used until the next time for redistricting under this article in accordance with the provisions of this constitution that are then valid.

Id. § 3(B)(1).

13. Section 3(B)(2) further provides for a transfer of the map-drawing responsibility to the Commission in the event that the General Assembly fails to enact a plan that remedies the identified constitutional infirmities:

If a new congressional district plan is not passed in accordance with division (B)(1) of this section and filed with the secretary of state . . . the Ohio redistricting commission shall be reconstituted and reconvene and shall adopt a congressional district plan in accordance with the provisions of this constitution that are then valid.

Id. § 3(B)(2).

14. Section 3(B)(2) further provides that any “congressional district plan adopted under this division *shall remedy any legal defects in the previous plan identified by the court . . .*” *Id.* (emphasis added).

15. Petitioners seek a determination that the Revised Plan fails to comply with this Court’s January 14, 2022 order, in particular, because it is invalid under Article XIX, Sections 1(C)(3) and 3(B)(2). Accordingly, this action falls within the jurisdictional grant of this Court as set forth in Section 3(B). Petitioners further request that this Court retain jurisdiction over

subsequent revisions to the congressional plan so as to require compliance with the requirements of the Ohio Constitution.

PARTIES

A. Petitioners

16. Petitioner League of Women Voters of Ohio (“LWVO”) is the Ohio chapter of the League of Women Voters of the United States—a nonpartisan, statewide non-profit founded in May 1920, shortly before the ratification of the Nineteenth Amendment in August 1920 granting women’s suffrage. Ex. 2, Miller Aff. ¶ 4.

17. LWVO currently has 3,816 members across the state, the vast majority of whom are registered Ohio voters, who live and vote in all of Ohio’s congressional districts, and many of whom will have their votes diluted by the Revised Plan. LWVO’s members make up 29 local Leagues and 4 at-large units that are dedicated to empowering citizens and ensuring an effective democracy. *Id.*

18. As part of its mission to empower voters and defend democracy, LWVO aims to shape public policy, educate the public about policy issues and the functioning of our democracy, and protect and expand Ohioans’ access to elections and their government. As such, LWVO and its members invest substantial volunteer time in voter education, civic engagement, and voter registration efforts. *Id.* ¶ 5.

19. The Revised Plan impairs LWVO’s mission by deterring and discouraging its members and other Ohio voters from engaging in the political process, thereby making it more difficult for LWVO to engage voters through its education, registration, and outreach efforts. For example, LWVO and its members have struggled to engage and activate self-identified Democratic voters in districts drawn in a manner that unduly favors Republican candidates. And

when LWVO hosts forums for candidates in districts that are not competitive, it is difficult to get candidates from the favored party to attend. *Id.* ¶ 6.

20. Concern about the prospect of a gerrymandered congressional map has forced LWVO to divert staff responsibilities, member efforts, and financial resources to an advocacy campaign for fair districts. If LWVO and its members were able to rely on a nonpartisan process to produce fair maps and competitive districts, those resources would otherwise have been devoted to LWVO's traditional nonpartisan voter education services and programs. *Id.* ¶ 7.

21. Instead, LWVO has been forced to expend money and time advocating for fair districts. This advocacy by members and staff includes attending and testifying at multiple hearings across the state, mobilizing voter communications with elected officials, and organizing lobbying visits and rallies at the Statehouse in Columbus, among other efforts. Indeed, LWVO has deployed all of its staff members on redistricting-related work, hired a new staff person to work strictly on redistricting, and hired a mapping expert to run the citizen map-drawing competition and analyze the Ohio Redistricting Commission map proposals as they became available. *Id.* ¶ 8.

22. Fundraising by LWVO for its traditional programs has also suffered during 2021–2022 due to the fair districts campaign. Financial supporters of LWVO have been forced to choose between supporting LWVO's traditional programs and funding the advocacy campaign for fair districts in 2021–2022. As an example, LWVO's fundraising for Women's Equality Day was down roughly 40 percent in 2021 compared to 2020. *Id.* ¶ 9.

23. LWVO is suing on its own behalf as well as in its capacity as representative of its members in order to seek a constitutional map. *Id.* ¶ 13.

24. Petitioner Ohio A. Philip Randolph Institute (“APRI”) is the Ohio chapter of the A. Philip Randolph Institute, a national organization for African-American trade unionists and community activists. Ex. 3, Washington Aff. ¶¶ 3–4.

25. APRI is a membership organization with eight chapters across Ohio. Throughout the state, APRI has hundreds of members and volunteers—all or nearly all of whom are registered Ohio voters and many of whom will have their votes diluted by the Revised Plan. *Id.* ¶ 5.

26. While APRI supports a variety of charitable ventures unrelated to voting, much of APRI’s work is focused on voter education, registration, civic engagement, and voter outreach efforts. APRI leadership and members conduct in-person and virtual voter outreach and voter education events, including partnerships with churches to educate the public about absentee voting. *Id.* ¶¶ 4, 8.

27. The Revised Plan impairs APRI’s work by deterring and discouraging its members and other Ohio voters from engaging in the political process, thereby making it more difficult for APRI to engage voters through its education, registration, and outreach efforts. At voter outreach events throughout 2021 and 2022—both in person and virtual—APRI representatives have routinely heard attendees reiterate the following concern: because of gerrymandering, voters believe nothing will ever change and that they will never obtain a fair district map where their votes will matter. As a result, partisan gerrymandering has made it more difficult for APRI members to engage citizens in the electoral process. *Id.* ¶¶ 9–10.

28. The prospect of another gerrymandered map has consumed APRI’s time and resources throughout this redistricting cycle that would otherwise have gone to traditional voter registration and outreach efforts. Indeed, APRI would not have had to divert resources if its

members could rely on Ohio's process to produce nonpartisan, fair maps. For example, APRI members have invested time and energy observing several of the Ohio Redistricting Commission's meetings virtually in order to report back to its members and the broader community, and look for opportunities where the public could provide input. Additionally, APRI members have been forced to educate citizens and answer countless questions about the redistricting process, what "packing" and "cracking" are, why there is an initiative for fair districts and what its goals are, why their neighborhoods have been carved up in unprecedented ways, and why a system has been designed that leads them to feel that their votes do not count. *Id.* ¶¶ 11–12.

29. Members of the public frequently contact APRI with questions about gerrymandering and similar issues, because they cannot reach their elected representatives or get answers from them. Responding to questions about redistricting also takes up a significant amount of APRI's time and resources. *Id.* ¶ 13.

30. APRI is suing on its own behalf as well as in its capacity as representative of its members in order to seek a constitutional map. *Id.* ¶ 15.

31. Petitioner Bette Evanshine is a United States citizen, registered to vote in the State of Ohio, and an active Ohio voter. She is a Democratic voter, has supported Democratic candidates for the U.S. House of Representatives in the past, and plans to support such candidates in the future. Petitioner Evanshine is an active member of the League of Women Voters of Ohio. She lives at 3877 Paxton Ave, Cincinnati, OH 45209, which is in Congressional District 1 in the Revised Plan. District 1 has been drawn so as to submerge Democratic votes so as to prevent Democratic voters from electing their candidates of choice.

32. Petitioner Janice Patterson is a United States citizen, registered to vote in the State of Ohio, and an active Ohio voter. She is a Democratic voter, has supported Democratic candidates for the U.S. House of Representatives in the past, and plans to support such candidates in the future. Petitioner Patterson is an active member of the League of Women Voters of Ohio. She lives at 401 Bounty Way Apt. 162, Avon Lake, OH 44012, which is in Congressional District 5 in the Revised Plan.

33. Petitioner Barbara Brothers is a United States citizen, registered to vote in the State of Ohio, and an active Ohio voter. She is a Democratic voter, has supported Democratic candidates for the U.S. House of Representatives in the past, and plans to support such candidates in the future. Petitioner Brothers is an active member of the League of Women Voters of Ohio. Petitioner Brothers lives at 1310 5th Ave, Apt. 1005, Youngstown, OH 44504, which is in Congressional District 6 in the Revised Plan.

34. Petitioner John Fitzpatrick is a United States citizen, registered to vote in the State of Ohio, and an active Ohio voter. He is a Democratic voter, has supported Democratic candidates for the U.S. House of Representatives in the past, and plans to support such candidates in the future. Petitioner Fitzpatrick is an active member of the League of Women Voters of Ohio. Petitioner Fitzpatrick lives at 3536 Homewood Ave., Cuyahoga Falls, OH 44221, which is in Congressional District 13 in the Revised Plan.

35. Petitioner Stephanie White is a United States citizen, registered to vote in the State of Ohio, and an active Ohio voter. She is a Democratic voter, has supported Democratic candidates for the U.S. House of Representatives in the past, and plans to support such candidates in the future. Petitioner White is an active member of the League of Women Voters

of Ohio. She lives at 8 Hidden Valley Drive Apt. 18, Toledo, OH 43615, which is in Congressional District 9 in the Revised Plan.

36. Petitioner Janet Underwood is a United States citizen, registered to vote in the State of Ohio, and an active Ohio voter. She is a Democratic voter, has supported Democratic candidates for the U.S. House of Representatives in the past, and plans to support such candidates in the future. Petitioner Underwood is an active member of the League of Women Voters of Ohio. She lives at 108 E. Hudson Ave., Dayton, OH 45405, which is in Congressional District 10 in the Revised Plan.

37. Petitioner Renee Ruchotzke is a United States citizen, registered to vote in the State of Ohio, and an active Ohio voter. She is a Democratic voter, has supported Democratic candidates for the U.S. House of Representatives in the past, and plans to support such candidates in the future. Petitioner Ruchotzke is an active member of the League of Women Voters of Ohio. Petitioner Ruchotzke lives at 237 Highland Ave., Kent, OH 44240, which is in Congressional District 14 in the Revised Plan.

38. Petitioner Tiffany Rumbalski is a United States citizen, registered to vote in the State of Ohio, and an active Ohio voter. She is a Democratic voter, has supported Democratic candidates for the U.S. House of Representatives in the past, and plans to support such candidates in the future. Petitioner Rumbalski is an active member of the League of Women Voters of Ohio. Petitioner Rumbalski lives at 3830 Westbrook Dr., Hilliard, OH 43026, which is in Congressional District 15 in the Revised Plan. District 15 has been drawn so as to submerge Democratic votes, thus preventing Democratic voters from electing their candidates of choice.

39. By requiring voters to vote under a plan that unduly favors the Republican Party, the individual petitioners' right to vote has been impaired. In particular, they are either less

likely to be able to elect their preferred candidate or their vote is improperly wasted by virtue of their being placed in a packed district.

B. Respondents

40. Respondents include each Ohio elected official and entity with responsibility for proposing, approving, implementing, and remedying Ohio's congressional plan, such that all necessary parties are before the Court.

41. Respondent Frank LaRose is the Ohio Secretary of State and a member of the Commission, and is sued in his official capacity. He is the chief election officer in Ohio responsible for overseeing election administration. *See* R.C. 3501.04.

42. Respondent Matt Huffman is the President of the Ohio State Senate and a member of the Commission, and is sued in his official capacity. The General Assembly had initial authority for drawing Ohio's congressional districts, passed the Enacted Plan, and was responsible for remedying the plan in the first instance after the Court deemed it invalid.

43. Respondent Bob Cupp is the Speaker of the Ohio House of Representatives and the Co-Chair of the Commission, and is sued in his official capacity. The General Assembly had initial authority for drawing Ohio's congressional districts, passed the Enacted Plan, and was responsible for remedying the plan in the first instance after the Court deemed it invalid.

44. Under Article XIX, the Commission is charged, under certain circumstances, with enacting a congressional district plan. Should the General Assembly fail to enact a plan in the first instance, the Commission then has secondary authority for drawing Ohio's congressional districts. Before the Enacted Plan was passed by the General Assembly, the Commission failed to adopt a congressional plan in October 2021.

45. Following the General Assembly's failure to adopt a revised plan by February 13, 2022, the Commission adopted the Revised Plan on March 2, 2022. In so doing, it failed to

remedy the legal defects in the Enacted Plan, as identified by the Court in its January 14, 2022 order.

LEGAL BACKGROUND

46. The Census Bureau announced that Ohio will lose one seat in the 2021 congressional redistricting—from 16 to 15 seats, reflecting its population of 11,808,848. *See* U.S. Census Bureau, *Apportionment Population and Number of Representatives By State: 2020 Census*, <https://bit.ly/2ZEyXDp>, (accessed Nov. 30, 2021).

47. Article XIX sets forth various constitutional constraints on how this congressional map shall be drawn. It further imposes detailed guidelines for redistricting that include specific rules for the reapportionment process, as well as mandates that the Commission and General Assembly prohibit undue partisan advantage.

A. Redistricting Process and Deadlines

48. Article XIX states that the General Assembly must pass the congressional district plan by a three-fifths vote in each house (including the affirmative vote of at least one-half of the members of each of the two largest political parties in that house) by September 30. Ohio Const., art. XIX, § 1(A).

49. Section 1(B) provides that if a plan is not passed by September 30 per Section 1(A), the Commission is to adopt a plan by October 31. *Id.* § 1(B). This must include the affirmative vote of four members of the Commission, including at least two members of the Commission who represent each of the two largest political parties represented in the General Assembly. *Id.*

50. Per Section 1(C)(1), if the General Assembly does not pass a plan by a three-fifths vote by September 30, and the Commission does not enact a bipartisan plan by October 31, then

the General Assembly is to pass a plan by November 30. *Id.* § 1(C)(1). At that point, the General Assembly has two options.

51. First, pursuant to Article XIX, Section 1(C)(2), a ten-year plan can be enacted if supported by a super majority (three-fifths of each house of the General Assembly) that satisfies a bipartisan requirement. The bipartisan requirement mandates that at least one-third of the members of the two largest parties in each house vote in favor of the plan. *Id.* § 1(C)(2).

52. Alternatively, pursuant to Section 1(C)(3), a four-year plan can be enacted if supported only by a simple majority in each house of the General Assembly. *Id.* § 1(C)(3).

53. Prior to the passage or adoption of a congressional plan under any of the methods described above, a joint committee of the General Assembly or the Commission must hold at least two public hearings. *Id.* § 1(G).

54. The Constitution provides for further proceedings following an order of this Court identifying defects in the enacted plan. In particular, Section 3(B)(1) provides that the General Assembly shall pass the referenced plan not later than the thirtieth day after the date of this Court's order requiring a revision of the enacted plan. *Id.* § 3(B)(1).

55. If a new congressional district plan is not passed in accordance with Section 3(B)(1) and filed with the Secretary of State, the Ohio Redistricting Commission shall reconvene and adopt a congressional district plan in accordance with the then-valid provisions of the Ohio Constitution. *Id.* § 3(B)(2). Those then-valid provisions of the Ohio Constitution include Sections 1(C)(3)(a)–(b). Indeed, Section 3(B)(2) nowhere provides that the anti-partisan gerrymandering provisions of Sections 1(C)(3)(a)–(b) can be evaded by the mere handoff of the map-drawing process from the General Assembly to the Commission.

56. Section 3(B)(2) further provides that the Commission shall adopt the referenced plan not later than the thirtieth day after the deadline set forth for the passage of a new plan by the General Assembly, *i.e.*, sixty days after the order of this Court that required a revision of the Enacted Plan.

B. Bars on Undue Partisanship and Undue Splitting

57. In the first instance, if a plan is passed by a simple majority pursuant to Section 1(C)(3), then Article XIX specifies that “a plan that unduly favors or disfavors a political party or its incumbents” shall not be passed. *Id.* § 1(C)(3)(a).

58. Section 1(C)(3)(b) further states that a plan “shall not unduly split governmental units, giving preference to keeping whole, in the order named, counties, then townships and municipal corporations.” *Id.* § 1(C)(3)(b).

59. For any plan passed pursuant to Section 1(C)(3), there must be an explanation of the plan’s compliance with, *inter alia*, the prohibition of Section 1(C)(3)(a) on unduly favoring or disfavoring a political party or its incumbents. *See Id.* § 1(C)(3)(d). The statement must also explain the plan’s compliance with the prohibition of undue splitting as set forth in Section 1(C)(3)(b).

C. The Process for Revising an Invalidated Plan

60. If a plan is invalidated by this Court, as it has been here, Section 3(B) provides:

[T]he General Assembly shall pass a congressional district plan in accordance with the provisions of this constitution that are then valid, to be used until the next time for redistricting under this article in accordance with the provisions of this constitution that are then valid.

Id. § 3(B)(1).

61. If the General Assembly is unable to pass a revised plan in accordance with Section 3(B)(1), Section 3(B)(2) then provides:

[T]he Ohio redistricting commission shall be reconstituted and reconvene and shall adopt a congressional district plan in accordance with the provisions of this constitution that are then valid.

Id. § 3(B)(2).

62. Critically, Section 3(B)(2) further provides that any “congressional district plan adopted under this division shall *remedy any legal defects in the previous plan identified by the court . . .*” *Id.* (emphasis added).

FACTUAL BACKGROUND

D. The 2011 Congressional Map And Its Adjudication

63. The maps that came out of Ohio’s 2011 decennial apportionment process were severely gerrymandered. This bias persisted throughout the decade, with Republicans consistently winning 75% of the congressional seats (12 out of 16) while only earning 55% of the votes in statewide elections during that period. Ex. 4, Report of Dr. Christopher Warshaw (Nov. 30, 2021) (hereinafter “Warshaw Rep. (Nov. 30, 2021)”) at 5–6.

64. The process that led to this gerrymandered result was outlined in detail by the three-judge federal panel in *Ohio A. Philip Randolph Inst. v. Householder*, 373 F. Supp. 3d 978 (S.D. Ohio 2019). Based on the court’s review of extensive evidence, it found that “partisan intent predominated” during the map-drawing process. *Id.* at 1099. In reaching this conclusion, the court specifically credited, among other things, “evidence of the timeline and logistics of the map-drawing process, the map drawers’ heavy use of partisan data, contemporaneous statements made by the map drawers about their efforts. . . .” *Id.*

E. The 2018 Constitutional Amendments

65. As a direct response to the severe partisan manipulation of the last decade, Ohio voters enacted Article XIX, which was specifically intended to end partisan gerrymandering.

66. In the spring of 2017, a coalition of good government groups, known as the Fair Districts = Fair Elections Coalition (“the Coalition”), began an initiative process in support of their “Fair Congressional Districts for Ohio” ballot proposal (“the Initiative”). See Ohio Environmental Council, *Trio of Good Government Groups File Congressional Redistricting Proposal: Congressional Reform Mirrors State Reform Measure Approved by 71% of Ohio Voters in 2015*, (Apr. 24, 2017), <http://bitly.ws/jLZ2>, (accessed Nov. 30, 2021). The Coalition began gathering signatures in 2017 to place this initiative on the November 2018 ballot. *Id.* In response, General Assembly Republicans began a process to place their own initiative on the ballot, one that would preserve the redistricting power of the legislature they controlled. See Karen Kasler, *Ohio Voters May See Two Anti-Gerrymandering Issues on Their Ballots Next Year*, WKSU, (Dec. 21, 2017), <http://bitly.ws/jLZI>, (accessed Nov. 30, 2021).

67. On January 16, 2018, Senator Matt Huffman released a redistricting reform bill, SJR 5. Ex. 5, Rep. Huffman Sponsor Testimony for S.J.R. 5 (Jan. 17, 2018). Notably, his bill did not include any prohibition on unduly favoring or disfavoring a political party. *Id.*

68. Witnesses at hearings considering the legislation uniformly opposed Senator Huffman’s partisan bill and decried its failure to include any explicit bar on partisan gerrymandering. See S.J.R 5 Committee Activity, Government Reform and Oversight Committee, (Jan. 2018), <http://bitly.ws/jLZe>, (accessed Nov. 30, 2021).

69. Senator Huffman withdrew his original bill and re-introduced a compromise bill, which included explicit language prohibiting the passage of a plan that unduly favors or disfavors a party or its incumbents. See The Ohio Senate, *Republicans Announce Significant Changes Made To Congressional Redistricting Plan*, (Jan. 29, 2018), <http://bitly.ws/jM4s>, (accessed Nov. 30, 2021).

70. The bill was passed overwhelmingly in the General Assembly on February 6, 2018. S.J.R. 5 Votes, Government Reform and Oversight Comm., (Feb. 6, 2018), <http://bitly.ws/jM53>, (accessed Nov. 30, 2021). Following passage of SJR 5, the reform initiative was approved by the Secretary of State as a ballot initiative, Issue 1, for the May 8, 2018, primary. Ex. 6, Statewide Issue 1, at 1. The ballot measure informed voters that the “proposed amendment would end the current partisan process for drawing congressional districts by a simple majority vote of the General Assembly,” and that “[i]f bipartisan support cannot be obtained, strict anti-gerrymandering criteria would apply when adopting a congressional map.” *Id.* Proponents of the measure, including Senator Matt Huffman, urged voters to support Issue 1, stating that “[a] **YES** vote will create a **fair, bipartisan, and transparent** process when drawing congressional districts that will **make politicians more accountable** to the voters.” *Id.* at 2. He added, “[v]oting **YES on Issue 1** will limit gerrymandering by requiring that congressional districts be drawn with **bipartisan approval or utilizing strict anti-gerrymandering criteria.**” *Id.*

71. On May 8, 2018, voters overwhelmingly approved the initiative by a 75-to-25% margin, and the constitutional amendments went into effect on January 1, 2021. *See* Rich Exner, Cleveland.com, *Ohio votes to reform congressional redistricting; Issue 1 could end gerrymandering*, (May 09, 2018), <http://bitly.ws/jM5Q>, (accessed Nov. 30, 2021).

F. The Enactment of the 2021 Congressional Map

1. The Failure To Provide a Plan Until November 3, 2021

72. The 2020 Census revealed that Ohio would be entitled to 15 congressional districts for the next 10 years, one fewer than the 16 districts that had previously been the case. Jim Gaines, Dayton Daily News, *Ohio Lawmakers Miss Deadline to Draw New Congressional Districts. What's Next?*, (updated Oct. 1, 2021), <https://bit.ly/3liLofB>, (accessed Nov. 30, 2021).

Census data pertinent to the drawing of a new plan was provided on August 12, 2020. U.S. Census Bureau, *U.S. Census Bureau Delivers Data for States to Begin Redistricting Efforts*, (Aug. 12, 2021), <https://bit.ly/3nWjyYm>, (accessed Nov. 30, 2021).

73. Even with this lead time, the Republican-controlled General Assembly failed to offer a Republican map before the constitutionally appointed deadline of September 30, 2021. Jim Gaines, Dayton Daily News, *Ohio Lawmakers Miss Deadline to Draw New Congressional Districts. What's Next?*, (updated Oct. 1, 2021), <https://bit.ly/3liLofB>, (accessed Nov. 30, 2021). It did so notwithstanding the fact that the Democratic Caucus had set forth a proposed map before that date. *See* S.B. 237, 134th Gen. Assembly (Ohio 2021) (as introduced).

74. With the General Assembly unable to pass a plan by the September 30 deadline, the Commission was then required to pass a plan by the October 31, 2021 deadline. Similarly, the Commission missed that deadline, despite calls from several members of the Commission. *See* Ex. 7, V. Sykes Letter to R. Cupp (Oct. 5, 2021); Ex. 8, V. Sykes Letter to R. Cupp (Oct. 18, 2021).

75. Ultimately, the October 31 deadline came and went with no action by the Commission. Andrew Tobias, Cleveland.com, *Ohio Lawmakers to Take Up Congressional Map After Redistricting Commission Fails to Act*, (Oct. 28, 2021), <https://bit.ly/3D0jTxi>, (accessed Nov. 30, 2021).

2. The November 3, 2021 Plan and the Flawed Legislative Process Regarding That Plan

76. On November 3, 2021, Ohio Republicans introduced distinct congressional redistricting maps in each chamber of the General Assembly. *See* H.B. 479, 134th Gen. Assembly (Ohio 2021) (as introduced); S.B. 258, 134th Gen. Assembly (Ohio 2021) (as

introduced). Both bills were immediately referred to their respective chamber's committees and heard in committee just minutes later.

77. That day, the Senate Local Government and Elections Committee (“the Senate Committee”) held its first hearing of SB 258, the Senate Republican-sponsored map. The Senate map was not made available to Senate Committee members or the public until the start of the hearing, and similarly, the Senate Republican staffer, Ray DiRossi, who drew the map, was not made available to testify or answer senators’ questions during the Senate Committee’s public hearing. Ex. 9, Tr. of Nov. 3, 2021 Ohio S. Comm. Local Government and Elections Hrg., at 11, 16.

3. November 16, 2021: the Senate Adopts the Republican Plan

78. On the evening of November 15, 2021, Senator McColley introduced substitute bill SB 258 with a revised Republican map. This revised Republican map was crafted primarily by the Republican Speaker of the House and the Republican President of the Senate. Ex. 10, Tr. of Nov. 16, 2021 Ohio S. Comm. Local Government and Elections Hrg., at 4–5. The next morning, on November 16, 2021, the Senate Committee heard testimony from Senator McColley about the revised Republican map.

79. Despite requests from Senator Vernon Sykes to engage in compromise, the Senate Committee voted to adopt the revised Republican map on a 5–2 party-line vote. *Id.* at 8.

80. Just hours later, the full Senate voted along party lines, 24–7, to adopt the Republican map. S.B. 258 Votes, 134th Gen. Assembly, (Ohio 2021), <https://bit.ly/3dDcaei>, (accessed Mar. 10, 2022).

4. November 18, 2021: The Vote in the House

81. Following Senate passage, the House Committee took up the same Republican map and passed the map on a 8–5 party-line vote. *Id.*

82. On November 18, 2021, House Republicans brought SB 258, the revised Republican map, to the floor for a vote. House Democrats uniformly expressed opposition to SB 258, noting that it contravened the will of the voters. Ex. 11, Tr. of Nov. 18, 2021 Ohio H. Floor Debate, at 7–9, 11–21.

83. Ultimately, on November 18, 2021, the Republican majority passed the bill. Four Republicans joined all House Democrats in voting no.

5. The Section 1(C)(3)(d) Statement and the Governor’s November 20, 2021 Signature

84. Pursuant to Article XIX, Section 1(C)(3)(d), the following statement was included as part of SB 258, seeking to explain its compliance with Section 1(C)(3)(a)’s prohibition of a plan that unduly favored a political party:

The congressional district plan does not unduly favor or disfavor a political party or its incumbents. The plan contains six Republican-leaning districts, two Democratic leaning districts, and seven competitive districts. The number of competitive districts in the plan significantly exceeds the number of competitive districts contained in the congressional district plan described in the version of section 3521.01 of the Revised Code that was in effect immediately before the effective date of this section.

Two incumbents expected to seek office again, both Republican, are paired in one district in the plan described in sections 3521.01 to 3521.0115 of the Revised Code, as enacted by this act. No other incumbent, either Republican or Democratic, expected to seek office again, is paired with another incumbent in a congressional district in this plan.

S.B. 258 § 3(A), 134th Gen. Assembly (Ohio 2021) (as enrolled).

85. After its passage in the House, the Republican map went to Governor Mike DeWine for his signature. Governor DeWine signed SB 258 on November 20, 2021.

G. The Resulting Partisan Gerrymander of the Enacted Plan

1. Three Distinct Methods Confirm That the Enacted Plan Unduly Favored the Republican Party

86. To determine the degree to which the Enacted Plan favored the Republican Party, Petitioners' expert, Dr. Chris Warshaw, approached the question using three distinct methods. All three analyses came to the same conclusion: that the Enacted Plan afforded the Republican Party congressional seats in a manner that was grossly disproportionate to that party's share of the votes in Ohio, and unduly favored the Republican Party and its incumbents. *See* Ex. 4, Warshaw Rep. (Nov. 30, 2021) at 5, 19. Dr. Warshaw also concluded that the plan unduly favored the Republican Party based on four established partisan metrics. *Id.* at 19–21.

2. The General Assembly's Inaccurate Contention that the Enacted Plan Contained a Large Number of "Competitive" Districts

87. Pursuant to Section 1(C)(3)(d), the General Assembly sought to justify the Enacted Plan with the following statement:

[T]he plan contains six Republican-leaning districts, two Democratic-leaning districts, and seven competitive districts. The number of competitive districts in the plan significantly exceeds the number of competitive districts contained in Ohio's current plan.

S.B. 258 § 3(A), 134th Gen. Assembly (Ohio 2021) (as enrolled).

88. This statement, however, is inaccurate. First, there were at most three, not seven, competitive districts. The four districts wrongly characterized as "competitive" were in fact Republican-leaning districts. Ex. 4, Warshaw Rep. (Nov. 30, 2021) at 21–24. This is true when the competitiveness of districts is measured under three different election methods (the 2020 Congressional set, the Composite Index, or the PlanScore approach). And it is true whether one evaluates "competitiveness" as did the General Assembly: (1) using a rule that any district within a 45%–55% vote range is "competitive," or (2) looking to whether a district is likely to

switch parties at least once per decade based on the maximal swing in the two-party vote. *Id.* at 22–23.

89. The results of these various approaches are summarized in Table 7 of Dr. Warshaw’s Report on the Enacted Plan:

Data:	2020 House Results		Composite (2012-20)	PlanScore			Mean
Metric:	45-55	Historical Swing	45-55	45-55	20%+ Prob. of Each Party Win.	50%+ Prob. Flip in Dec.	
Plan	(1)	(2)	(3)	(4)	(5)	(6)	(7)
2012-20 Plan	2	1	1	3	2	5	2
Enacted Plan	3	3	3	4	2	4	3

Table 7: Number of competitive districts using various data sources and metrics.

90. Second, the mere fact that a district is considered to be “competitive” under either definition does not mean that there is a 50/50 chance of either party winning that district’s congressional seat. In fact, the Republicans were favored to win all of the “competitive” seats, and heavily favored in at least one of them. Indeed, the Republican candidate had a 64% chance to win District 1, an 84% chance to win District 9, and a 69% to win District 13. Ex. 4, Warshaw Rep. (Nov. 30, 2021) at 23–24. The district-by-district results are set forth in Table 8 of Dr. Warshaw’s Report on the Enacted Plan, where the districts shaded grey are the “competitive” districts and the vote percentages under the three different methods used by Dr. Warshaw represent the Democratic Party vote share. As Table 8 makes clear, if one averages all three methods, the Democratic vote share in each of the three so-called “competitive” districts was 47%. *Id.* at 24.

District	Projected Democratic Vote Share				Probability Dem. Wins (PlanScore)
	House 2020	Composite (2012-2020)	PlanScore	Average Dem. Share	
1	0.48	0.46	0.48	0.47	36%
2	0.29	0.33	0.30	0.30	1%
3	0.70	0.66	0.70	0.69	99%
4	0.30	0.31	0.31	0.31	1%
5	0.35	0.38	0.35	0.36	1%
6	0.38	0.44	0.36	0.40	1%
7	0.37	0.40	0.38	0.39	1%
8	0.36	0.36	0.36	0.36	1%
9	0.46	0.49	0.45	0.47	16%
10	0.42	0.45	0.46	0.44	18%
11	0.79	0.77	0.76	0.77	99%
12	0.30	0.36	0.32	0.33	1%
13	0.47	0.48	0.48	0.47	31%
14	0.40	0.44	0.42	0.42	4%
15	0.43	0.43	0.44	0.44	13%

Table 8: Democratic Vote Share Projections for Each District on Enacted Plan using a Variety of Methods. Competitive districts in grey.

3. The Enacted Plan Unduly Favored Republican Incumbents

91. The Enacted Plan also favored incumbents from the Republican Party.

While it did not pair multiple Democratic incumbents in a single district, it put two of the four Democratic incumbents from the previous plan into largely new districts that would have a majority of Republican voters. It did not put any Republican incumbent into a district with a majority of Democratic voters. Ex. 4, Warshaw Rep. (Nov. 30, 2021) at 6, 25. The adverse impact on Democratic incumbents is captured by Table 9 in Dr. Warshaw's Report on the Enacted Plan. It shows how the Enacted Plan put the Democratic incumbents in Districts 9 and 13 into largely new districts that would have a majority of Republican voters based on the 2020 congressional election results.

2020 Districts	2022 District	% Overlap	Dem. Vote Share Old District	Dem. Vote Share New District
1	1	0.81	0.46	0.48
2	2	0.68	0.39	0.29
3	3	0.71	0.71	0.70
4	4	0.53	0.30	0.30
5	9	0.56	0.32	0.46
6	6	0.61	0.26	0.38
7	7	0.41	0.30	0.37
8	8	0.80	0.31	0.36
9	9	0.44	0.63	0.46
10	10	0.97	0.42	0.42
11	11	0.79	0.80	0.79
12	4	0.41	0.43	0.30
13	6	0.54	0.54	0.38
14	14	0.73	0.40	0.40
15	15	0.43	0.37	0.43
16	13	0.48	0.37	0.47

Table 9: Evaluation of how incumbent in each of the old districts would perform on the enacted plan based on re-aggregating the 2020 House results to new districts. Districts won by Democrats in 2020 in blue.

92. The bias against Democratic incumbents is especially clear in the case of Representative Marcy Kaptur. In 2020, she comfortably won reelection with 63% of two-party voters. The Enacted Plan, however, sliced her old district into five districts. Under the Enacted Plan, she would only have won about 46% of the vote share in the 2020 House election (compared to the 63% she actually won). In her now redrawn district under the Enacted Plan, Representative Kaptur would likely lose in 2022. Ex. 4, *Warshaw Rep.* (Nov. 30, 2021) at 6, 25.

4. The Undue Splitting To Advance Partisan Advantage in the Enacted Plan

93. The Enacted Plan achieved this extreme partisan gerrymander by strategically splitting counties and communities in metropolitan areas of the state, specifically in southwestern and northeastern Ohio. The splits were not required by any provision of Article XIX, by any other redistricting criterion in the Ohio Constitution, or other provision of law, but instead have the effect of conferring a Republican partisan advantage.

94. In southwestern Ohio, the Enacted Plan split Hamilton County into three distinct districts, each of which pairs a different segment of the Cincinnati area's heavily Democratic population with a sufficient number of exurban and rural Republicans to ensure a partisan advantage for Republicans in all three districts. Ex. 1, Rodden Aff. ¶ 64 & Table 2.

95. In District 8, the Enacted Plan combined the entire urban, Black population of north-central Hamilton County with rural Republican areas far to the north, with a northern boundary line that is some 85 miles away. *Id.*

96. In District 1, the Enacted Plan combined Cincinnati itself not with its immediate suburbs, but rather with rural Warren County, which it connected via an exceedingly narrow corridor crossing the Hamilton County boundary. *Id.*

97. In District 2, the Enacted Plan combined the eastern suburbs of Cincinnati with a large number of rural and heavily Republican counties running all the way across southern Ohio. *Id.*

98. According to expert testimony submitted by Professor Jonathan Rodden in *Adams, et al. v. DeWine, et al.*, No. 2021-1428, any map that properly aims “to minimize splits and keep Cincinnati-area communities together would produce a majority-Democratic district.” *Id.* ¶ 63. The Enacted Plan, by contrast, conjured from Hamilton County, which is Democratic, *id.* ¶¶ 63–64, no fewer than three Republican districts, two of which are safe Republican seats (Districts 2 and 8) and one of which leans Republican (District 1), *id.* Table 2. This partisan objective was accomplished only through blatant, unnecessary, and undue splitting of Hamilton County and its communities.

99. A similar pattern appeared at the opposite corner of the state, in northeastern Ohio, where the Enacted Plan strategically but unnecessarily split Cuyahoga and Summit counties for partisan aims. *Id.* ¶¶ 74–75.

100. In District 14, the Enacted Plan combined parts of Cuyahoga County immediately to the south and east of heavily Democratic Cleveland with counties to the east and south. Strikingly, the cities south of Cleveland were connected to the remainder of District 14 through an exceedingly narrow corridor that at one point represented the width of a solitary census block. According to Professor Rodden, not a single road connected these fragments of District 14, which was nearly split in half by the heavily Democratic and Cleveland-based District 11. *Id.* ¶ 75. Only that solitary census block prevented District 14 from being noncontiguous, and thus an even more egregious violation of Article XIX.

101. In District 13, the Enacted Plan combined the city of Akron not with its own suburbs in Summit County, but rather with rural Medina County and with the most Republican of Cleveland’s outer exurbs in Cuyahoga County. *Id.* ¶ 74.

102. Meanwhile, in District 7, the Enacted Plan carved out the eastern suburbs of Akron, combining those relatively urban, Democratic-leaning precincts with rural areas and counties far to the southwest, whose border is over 70 miles away. *Id.* This combination was possible only through the creation of what Professor Rodden describes as “a long, narrow north-south corridor that is, in one spot, less than one mile wide.” *Id.*

103. The upshot and intended effect of these unnecessary county splits in northeastern Ohio was to carve the Democratic urban and suburban areas of Cuyahoga and Summit counties into two safe Republican districts (7 and 14), one toss-up district (13), and a single safe Democratic district (11). *Id.* Table 2.

104. In both southwestern and northeastern Ohio, there was no plausible justification other than sheer partisanship for these undue and therefore unconstitutional splits.

H. The Invalidation of the Enacted Plan

105. On November 30, 2021, following Governor DeWine's signing into law of SB 258 (*i.e.*, the Enacted Plan), Petitioners filed a complaint before this Court alleging that the map drawn and passed by the General Assembly violated Article XIX of the Ohio Constitution.

106. Within days of the filing of the complaint, Respondents moved to dismiss the case and stay discovery. Petitioners opposed that motion and filed an amended complaint.

107. Following expedited discovery, full merits briefing, and oral argument, this Court held that the General Assembly “did not comply with Article XIX, Sections 1(C)(3)(a) and (b) of the Ohio Constitution in passing the congressional-district plan” and thus invalidated that plan and ordered the General Assembly to “pass a new congressional-district plan, as Article XIX, Section 3(B)(1) requires.” *Adams*, Slip Opinion No. 2022-Ohio-89, ¶ 102.

108. In particular, this Court ordered:

{¶ 99} By the plain language of Article XIX, Section 3(B), *both the General Assembly and the reconstituted commission, should that be necessary, are mandated to draw a map that comports with the directives of this opinion.*

{¶ 102} We hold that the General Assembly did not comply with Article XIX, Sections 1(C)(3)(a) and (b) of the Ohio Constitution in passing the congressional-district plan. We therefore declare the plan invalid and we *order the General Assembly to pass a new congressional-district plan . . . that complies in full with Article XIX of the Ohio Constitution and is not dictated by partisan considerations.*

Id. ¶¶ 99, 102 (emphases added).

I. The Revision of the Enacted Plan

109. Consistent with the Court’s order and Article XIX, Section 3(B)(1), the General Assembly was then required to enact a congressional districting plan within 30 days of the Court’s order—*i.e.*, by February 13, 2022.

110. Failure to enact a plan by that deadline would revert the responsibility for enacting a plan back to the Commission. *See* Ohio Const., art. XIX, § 3(B)(2).

1. The General Assembly Failed to Pass a New Plan in Accordance with the Court’s January 14 Order

111. On January 26, 2022, the original sponsor of the invalidated plan, Senator Rob McColley, introduced SB 286 legislation to “[d]eclare intent to revise congressional district boundaries.” S.B. 286 Status, 134th. Gen. Assembly, (Ohio 2022), <https://bit.ly/35P3nFA>, (accessed Mar. 10, 2022). The legislation did not include a plan for congressional district boundaries.

112. The next day, on January 27, Ohio Senate President Matt Huffman announced that the General Assembly would start drawing congressional districting maps during the week of February 7. Andy Chow, *Movement on New Ohio Congressional District Map Not Expected for Another Week*, The Statehouse News Bureau (Jan. 27, 2022), <https://bit.ly/3MIS2O1>, (accessed Mar. 10, 2022). On February 7, 2022, the Senate Government Budget Committee (the “Senate Committee”) noticed hearings on SB 286 scheduled to take place on February 8 and 9, 2022 before the Senate Committee. Gen. Gov’t Budget Comm., 134th Gen. Assembly, (Ohio 2022), <https://bit.ly/36R2Ovp>, (accessed Mar. 10, 2022). The House Government Oversight Committee also scheduled a hearing for February 8, 2022 to discuss congressional districting. Jim Gaines, *New U.S. House Map Stumbles Again in Wake of Latest Supreme Court Ruling*, Dayton Daily News (Feb. 8, 2022), <https://bit.ly/3KhisYJ>, (accessed Mar. 10, 2022).

113. Later that same day, the Ohio Supreme Court issued its ruling in a parallel case, *League of Women Voters of Ohio v. Ohio Redistricting Commission*, invalidating the Commission's first revised plan for state *legislative* districting plans, 2022-Ohio-342, ¶ 67.

114. The next morning, following the Court's order in the legislative case, the Senate Committee abruptly canceled the SB 286 hearings scheduled for February 8 and 9. Josh Rultenberg (@JoshRultNews), Twitter (Feb. 8, 2022, 9:18 AM), <https://bit.ly/3CfjWGL>. Senator Rob McColley was set to unveil his Republican congressional districting plan at the now-canceled hearings. Jim Gaines, *New U.S. House Map Stumbles Again in Wake of Latest Supreme Court Ruling*, Dayton Daily News (Feb. 8, 2022), <https://bit.ly/3KhisjJ>, (accessed Mar. 10, 2022). Nonetheless, the Ohio House and Senate Democrats released their congressional districting plan a couple hours later. Josh Rultenberg (@JoshRultNews), Twitter (Feb. 8, 2022, 11:20 AM), <https://bit.ly/34jhSbi>.

115. That same day, Ohio House Speaker Robert Cupp, Co-Chair of the Ohio Redistricting Commission, acknowledged that the General Assembly would not pass a map by the Article XIX, Section 3(B)(1) deadline of February 13, 2022. Josh Rultenberg, *Congressional Redistricting Headed for Ohio Redistricting Commission*, Spectrum News 1 (Feb. 8, 2022), <https://bit.ly/3hEzJ3L>, (accessed Mar. 10, 2022).

116. On February 13, 2022, the deadline came and went without any further action by the General Assembly. J.D. Davidson, *Ohio Lawmakers Miss Deadline for New Congressional District Map*, The Center Square (Feb. 14, 2022), <https://bit.ly/3sB0AJ1>, (accessed Mar. 10, 2022).

2. The Commission Takes Up the Task of Enacting a Revised Plan

117. On, February 22, 2022, the Commission convened to discuss congressional districting plans. At that hearing, Speaker Cupp, Co-Chair of the Commission, explained that the

responsibility for passing a congressional districting plan fell to the Commission now that the General Assembly failed to pass a plan by its constitutionally mandated deadline. Ex. 12, Tr. of Feb. 22, 2022 Ohio Redistricting Comm. Hrg., at 1; *see also* Ohio Const., art. XIX, § 3(B)(2).

118. The Commission met again on February 23 and 24, 2022 to hear testimony from sponsors of proposed congressional plans. The Ohio Redistricting Comm., *Announcement of Commission Meeting*, (Feb. 23, 2022), <https://bit.ly/3psSnVm>, (accessed Mar. 10, 2022).

119. One week later, on March 1, 2022, the Commission convened again. At this hearing, Speaker Cupp and Senate President Huffman introduced a Republican-drawn congressional districting plan. Senate President Huffman invited Democratic amendments to his plan. Ex. 13, Tr. of Mar. 1, 2022 Ohio Redistricting Comm. Hrg., at 9.

120. On March 2, 2022, Democrats introduced amendments to the Republican-sponsored plan, which were promptly rejected by the Republican Commissioners. Ex. 14, Tr. of Mar. 2, 2022 Ohio Redistricting Comm. Hrg., at 6, 14. The Commission then took up the Republican-sponsored plan, which was passed by a majority of the Commission on a 5–2 party line vote. *Id.* at 14–15.

J. The Revised Plan Violates Section 1(C)(3) By Unduly Favoring the Republican Party

121. The Revised Plan contravenes Section 1(C)(3) because it unduly favors the Republican Party and its incumbents, for the reasons set forth in the attached expert affidavits of Dr. Christopher Warshaw and Dr. Kosuke Imai. *See* Ex. 15, Affidavit of Dr. Christopher Warshaw (Mar. 6, 2022) (hereinafter “Warshaw Aff. (Mar. 6, 2022)”); Ex. 16, Report of Dr. Kosuke Imai (Mar. 6, 2022) (hereinafter “Imai Rep. (Mar. 6, 2022)”). In so doing, the Commission failed to remedy the legal defects in the previous plan identified by the Ohio Supreme Court. In particular, it fails to remedy the violations of Sections 1(C)(3)(a) and (b),

which were specifically identified as requiring remediation in the January 14, 2022 order of this Court. *Adams*, Slip Opinion No. 2021-1449, ¶ 102; *see also id.* ¶ 99 (directing the *Commission* specifically to remedy those defects).

122. The Revised Plan affords Republicans a grossly disproportionate share of the congressional seats relative to their statewide vote share. *See* Ex. 15, *Warshaw Aff.* (Mar. 6, 2022) at 4.

123. The partisan bias metrics confirms that the Revised Plan unduly favors the Republican Party and offers no material improvement over the Enacted Plan. *See* Ex. 15, *Warshaw Aff.* (Mar. 6, 2022) at 9.

124. As to the partisan bias of the Revised Plan, it is a statistical outlier when compared to 5,000 simulated plans. *See* Ex. 16, *Imai Rep.* (Mar. 6, 2022) ¶¶ 7–11. It achieves partisan ends “by turning Democratic-leaning districts into toss-up districts while making slightly Republican-leaning districts into safe Republican districts.” *Id.* ¶ 11.

125. The Revised Plan also creates non-compact districts that were drawn in a particular manner so as to enhance the strength of the Republican Party, as explained in detail in the attached expert affidavits of Drs. Warshaw and Imai. *See* Ex. 15, *Warshaw Aff.* (Mar. 6, 2022); Ex. 16, *Imai Rep.* (Mar. 6, 2022).

126. For example, the Revised Plan submerges Democratic voters on the outskirts of Columbus in Franklin County into District 15, which is fabricated out of territory stretching to the west. Ex. 16, *Imai Rep.* ¶ 19. By doing so, the Revised Plan dilutes Democratic voters’ votes and creates an additional safe Republican district.

127. The Revised Plan, as explained by Dr. Warshaw, demonstrates that District 15 is amongst the least compact districts in the nation—whether measured over the past 200 years or just by reference to the 2020 election cycle. *See* Ex. 15, Warshaw Aff. (Mar. 6, 2022) at 13–14.

128. Similarly, District 15 has a significantly lower compactness score than what would be seen in corresponding districts in Dr. Imai’s simulated plans. Ex. 16, Imai Rep. (Mar. 6, 2022) ¶ 22 & Figure 5.

129. District 1 under the Revised Plan also receives low compactness scores—with a Reock score of 0.31 and a Polsby-Popper score of 0.25. Ex. 15, Warshaw Aff. (Mar. 6, 2022) at 15.

130. Similarly, District 1 “combines part of Cincinnati and its environs with Warren County, resulting in a highly non-compact shape with the Polsby-Popper compactness score of 0.241.” Ex. 16, Imai Rep. (Mar. 6, 2022) ¶ 21.

K. The Commission Did Not Consider An Alternative Plan That Was Constitutionally Compliant

131. On February 22, 2022, the *League of Women Voters* Petitioners submitted to the Commission an Example Congressional District Plan (the “Example Plan”) crafted by Dr. Imai that is *more compliant* with Article XIX of the Ohio Constitution than the Revised Plan. Ex. 17, League of Women Voters’ Feb. 22, 2022, Map; Ex. 16, Imai Rep. (Mar. 6, 2022) ¶ 3.

132. Under the Example Plan, District 1 is wholly and compactly contained in Hamilton County without spilling into Warren County, in contrast to the Revised Plan. *See* Ex. 17, League of Women Voters’ Feb. 22, 2022, Map.

133. Under the Revised Plan, the portion of Franklin County that is not included in District 3 is submerged into District 15. Under the Example Plan, Franklin County is also split into two districts, but the Example Plan’s District 3 contains the southern part of Franklin

County, while the northern part of the county is included in a district identified as “District 12.” District 12 of the Example Plan is much more compact than District 15 in the Revised Plan. *See* Ex. 16, Imai Rep. (Mar. 6, 2022) ¶ 25.

134. Dr. Imai further demonstrated that the total number of counties split under the Revised Plan is much greater than that under any of the simulated plans and is also greater than the total number of counties split under the Example Plan. *See* Ex. 16, Imai Rep. (Mar. 6, 2022) App’x ¶ 2.

FIRST CAUSE OF ACTION

Violation of Article XIX, Section 1(C)(3)(a) and Section 3(B)(2) of the Ohio Constitution

135. Petitioners restate and incorporate by reference the allegations of paragraphs 1 through 134 above as though fully set forth in this Paragraph.

136. The Revised Plan contravenes Sections 1(C)(3)(a) and Section 3(B)(2) because it unduly favors the Republican Party and its incumbents through manifestly non-compact districts that were created to prevent the emergence of more compact Democratic-leaning districts. Accordingly, there can be no question that the Revised Plan unduly favors the Republican Party in violation of Article XIX.

137. The Revised Plan fails to remedy the defects in the original plan expressly identified in the Court’s January 14, 2022 order, in contravention of Article XIX, Section 3(B)(2).

138. Petitioners have no adequate remedy at law and will be irreparably harmed by the continued violation of their constitutional rights.

SECOND CAUSE OF ACTION

Violation of Article XIX, Section 1(C)(3)(b) and Section 3(B)(2) of the Ohio Constitution

139. Petitioners restate and incorporate by reference the allegations of paragraphs 1 through 138 above as though fully set forth in this Paragraph.

140. Section 1(C)(3)(b) directs that that the “general assembly shall not unduly split governmental units, giving preference to keeping whole, in the order named, counties, then townships and municipal corporations.”

141. The Revised Plan unduly splits governmental units. In particular, the total number of counties split under the Revised Plan is much greater than that under any of the simulated plans and is also greater than the total number of counties split under the Example Plan. Because this large number of splits is unnecessary, in that no redistricting criterion in the Ohio Constitution or other relevant provision of law requires such splits, and because their intended effect is to provide Republicans with an improper electoral advantage, those splits are undue and inconsistent with Section 1(C)(3)(b). Respondents’ failure to abide by Article XIX was in bad faith. This is reflected by the process, set forth above.

142. Petitioners have no adequate remedy at law and will be irreparably harmed by the continued violation of their constitutional rights

PRAYER FOR RELIEF

Accordingly, Petitioners respectfully request that this Court:

- A. Declare that the Revised Plan that Respondents adopted is invalid for failure to comply with Article XIX of the Ohio Constitution;
- B. Order the General Assembly and/or Commission to enact a plan that remedies the defects in two specific districts identified: (1) the improper non-compact configuration of Congressional District 1 that unduly favors the Republicans; and (2) the improper non-compact configuration of Congressional District 15 that unduly favors the Republicans;
- C. Issue a permanent injunction and judgment barring Respondents from calling, holding, supervising, administering, or certifying any elections under the Revised Plan that Respondents adopted, as Petitioners have no adequate remedy at law and will be irreparably harmed by the continued violation of their constitutional and statutory rights;
- D. Hold hearings, consider briefing and evidence, and otherwise take actions necessary to adopt redistricting plans for the State of Ohio or to direct the General Assembly or the Commission as to plans to be adopted;
- E. Retain jurisdiction of this action to render any and all further orders that the Court may from time to time deem appropriate, including, but not limited to, adjusting the schedule for the holding of the 2022 primary and/or the candidate filing deadline;
- F. Retain jurisdiction for the purpose of determining the validity of any new redistricting plans adopted by the General Assembly or the Commission pursuant to the Ohio Constitution; and

G. Grant such other or further relief the Court deems appropriate, including, but not limited to, an award of Petitioners' attorneys' fees and reasonable costs.

Respectfully submitted,

/s/ Freda J. Levenson

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IN THE SUPREME COURT OF OHIO

**LEAGUE OF WOMEN VOTERS OF
OHIO, *et al.*,**

Petitioners,

v.

**OHIO REDISTRICTING COMMISSION,
et al.,**

Respondents,

Case No. 2021-1449

**Original Action Filed Pursuant to Ohio
Constitution, Article XIX, Section 3(A)**

VERIFICATION OF ALEXANDER J. THOMSON

I, Alexander J. Thomson, having been duly sworn and cautioned according to law, hereby state that I am over the age of eighteen years and am competent to testify as to the facts set forth below based on my personal knowledge and having personally examined all records referenced in this affidavit, and further state as follows:

1. I serve as legal counsel to the Petitioners in this action.
2. Exhibit 1 to the Second Amended Complaint is a true and correct copy of the expert affidavit of Dr. Jonathan Rodden dated November 22, 2021 that was submitted by Petitioners in *Adams, et al., v. DeWine, et. al.*, No. 2021-1428.
3. Exhibit 2 to the Second Amended Complaint is a true and correct copy of the affidavit of Jen Miller.
4. Exhibit 3 to the Second Amended Complaint is a true and correct copy of the affidavit of Andre Washington.
5. Exhibit 4 to the Second Amended Complaint is a true and correct copy of the expert report of Dr. Christopher Warshaw dated November 30, 2021.
6. Exhibit 5 to the Second Amended Complaint is a true and correct transcription of then-Rep. Matt Huffman's Sponsor Testimony for S.J.R. 5 on January 17, 2018.
7. Exhibit 6 to the Second Amended Complaint is a true and correct copy of the 2018 Issue 1 ballot measure certified by then-Secretary of State Jon Husted.

8. Exhibit 7 to the Second Amended Complaint is a true and correct copy of Senator Vernon Sykes's October 5, 2021 letter to Speaker Robert Cupp.
9. Exhibit 8 to the Second Amended Complaint is a true and correct copy of Senator Vernon Sykes's October 18, 2021 letter to Speaker Robert Cupp.
10. Exhibit 9 to the Second Amended Complaint is a true and correct transcription of the Senate Local Government and Elections Committee's November 3, 2021 hearing.
11. Exhibit 10 to the Second Amended Complaint is a true and correct transcription of the Senate Local Government and Elections Committee's November 16, 2021 hearing.
12. Exhibit 11 to the Second Amended Complaint is a true and correct transcription of the House's November 18, 2021 floor debate.
13. Exhibit 12 to the Second Amended Complaint is a true and correct transcription of the Ohio Redistricting Commission's February 22, 2022 hearing.
14. Exhibit 13 to the Second Amended Complaint is a true and correct transcription of the Ohio Redistricting Commission's March 1, 2022 hearing.
15. Exhibit 14 to the Second Amended Complaint is a true and correct transcription of the Ohio Redistricting Commission's March 2, 2022 hearing.
16. Exhibit 15 to the Second Amended Complaint is a true and correct copy of the expert affidavit of Dr. Christopher Warshaw dated March 6, 2022.
17. Exhibit 16 to the Second Amended Complaint is a true and correct copy of the expert report of Dr. Kosuke Imai dated March 6, 2022.
18. Exhibit 17 to the Second Amended Complaint is a true and correct copy of the map proposed to the Ohio Redistricting Commission by the League of Women Voters of Ohio on February 22, 2022.
19. Exhibit 18 to the Second Amended Complaint is a true and correct copy of the March 1, 2022 Ohio Attorney General Opinion, No. 2022-004.
20. I have read the Second Amended Complaint filed in this action and affirm that the factual allegations contained therein are true.

Alexander J. Thomson
Alexander J. Thomson

Signed at Washington, _____, DC.
City County State

Sworn to and subscribed before me this 11th day of March, 2022

Melody E. Volkmann
Notary Public

MELODY E. VOLKMAN
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires August 31, 2023



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CERTIFICATE OF SERVICE

I, Freda J. Levenson, hereby certify that on this 11th day of March, 2022, I caused a true and correct copy of the foregoing to be served by email upon the counsel listed below:

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